*** THE HON'BLE SRI JUSTICE B. PRAKASH RAO**
AND
*** THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN**
+ W.A.No. 897 of 1998

% Dated 20-07-2006

Commisioner of Collegiate Education, Nampalli, Hyderabad and another.

.... Petitioner

Vs.

$.V. Narayana Reddy and another

.... Respondents

! Counsel for the Petitioner: Mr. G.P. for Higher Education

^ Counsel for the Respondent : Mr. D.V. Seetharamamurthy

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? Cases referred

[1] (1997) 4 SCC 647
2 W.P.No. 4553 of 1994 dated 25.11.1994
3 AIR 2002 SC 509
4 (2005) 6 SCC 49
5 (2004) 3 SCC 394
6 (2003) 6 SCC 483
7 (2003) 12 SCC 408
8 1993(2) SCC 162
9 (1996) 2 SCC 484
10 (2001) 4 SCC 52
11 (1996) 7 SCC 421
12 AIR 1993 SC 2647
13 (1995) 4 SCC 172
14 (1994) 6 SCC 302

THE HON'BLE SRI JUSTICE B. PRAKASH RAO
AND
THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

W.A.No. 897 of 1998

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order in W.P.No. 15318 of 1996, dated 09.09.1997, whereby the 1st respondent-writ petitioner was reinstated and given the benefit of service for all purposes including terminal benefits, the present writ appeal is filed.

The dispute in the writ petition relates to correction of the date of birth of an employee in his service records. The petitioner joined service as a Lecturer in Telugu in the 2nd respondent college on 30.07.1960. He was appointed as an N.C.C. Officer in 1961. While N.C.C. Officers are required to retire at the age of 50 years, the petitioner retired from the said post on 27.02.1994, after two extensions, on reaching the age of 54 years. While his date of birth was recorded in the college service register as 01.07.1938, it was recorded as 28.02.1940 in the N.C.C. register. The petitioner submitted a representation on 03.03.1996 for correction of his date of birth and filed W.P.No. 6245 of 1996 which was disposed of with a direction to the respondents to consider and pass appropriate

orders on the representation filed by him. Consequent thereto, the petitioner's request for alteration of his date of birth from 01.07.1938 to 28.02.1940 was rejected by order dated 25.06.1996 on the following grounds:-

i) entries in the N.C.C. record cannot be taken as authentic;

ii) entry in the S.S.L.C. book has not been rectified; and

iii) application for correction is belated.

During the course of hearing of W.P.No. 15318 of 1996, the learned single judge summoned the college records to verify as to whether the date of birth recorded in the application form submitted by the petitioner, while seeking employment, was 01.07.1938 or not. The 2nd respondent herein informed that all the records had been submitted to the education department. The learned Government Pleader informed the Court that the original application of the petitioner was not available.

The learned Judge held that the judgment of the Apex Court in **Union of India Vs. C. Rama Swamy**[1] would not apply and since the petitioner's application seeking employment was not available, it could not be inferred that the petitioners had given his date of birth as 01.07.1938 in his application form. The learned judge held that the N.C.C. records revealed that the petitioners had given his date of birth as 28.02.1940 and, since this was at the earliest point of time, his contention that the date of birth i.e., 01.07.1938, as recorded in the service register, was a clerical error required acceptance. The learned judge, while rejecting the contention that the N.C.C. records were not authentic, held that N.C.C. wing also

formed part of the education department and that the date of birth mentioned in the S.S.L.C. register was of no relevance. The learned Judge, while holding that there was *prima facie* mistake in recording the date of birth of the petitioner in the service register, set aside the order of the Commissioner of Collegiate Education, directed the respondents to correct the service register substituting the date of birth of the petitioner as 28.02.1940 and grant him consequential benefits of continuance in service until he attained the age of superannuation according to that date of birth. Upon taking note of the fact that the petitioner had retired on 30.06.1996, the learned Judge, while directing his reinstatement, held that his absence from 30.06.1996 till his date of reinstatement had to be ignored, that the petitioner shall be deemed to have been on duty and since the petitioner had not worked during that period, he would not be entitled for back wages. The learned Judge, however, held that the petitioner shall have continuity of service for all purposes and of terminal benefits and that he would be entitled for encashment of any earn leave which may have accrued him.

Learned Government Pleader for Higher Education would submit that, in accordance with his original date of birth as entered in the service records, the petitioner was to retire, on reaching the age of superannuation of 58 years, on 30.06.1996 and just a few months prior thereto he submitted a representation on 03.03.1996 seeking alteration of his date of birth. Learned Government Pleader would submit that no employee could seek correction of his date of birth just prior to his retirement and that such belated requests ought not to be permitted to be entertained. According to the learned Government Pleader the petitioner, a post-graduate in

Telugu and an office bearer of the teacher's association, was well conversant with the rules and regulations of the government regarding alteration of date of birth, and since his date of birth of 01.07.1938, as recorded in the service register, was on the basis of his S.S.L.C./S.S.C register, he was required to retire on reaching the age of superannuation of 58 years on 30.06.1996. Learned Government Pleader would submit that no reliance could be placed on the N.C.C. records more so when a request, for alteration of the date of birth in the service Register, was made just a few months prior to his retirement.

Sri D.V. Seetharamamurthy, learned Counsel for the respondent-writ petitioner on the other hand would place reliance on **Vasudevarao Vs. The Commissioner of Collegiate Education**[2], in support of his submission that in the absence of any statutory rules governing alteration of date of birth of employees in aided colleges, there was no period of limitation within which an application seeking alteration was required to be made and merely because such a request was made a few months prior to retirement, it could not be said to be belated. Learned Counsel would also rely on **Cement Corpn. of India Ltd. Vs. Raghbir Singh**[3], in support of his submission that in a case where an employee had sought for alteration of his date of birth just a couple of years prior to his retirement, the apex Court had confirmed the award of the labour Court directing payment of back wages and had only denied payment of interest thereon.

In **Vasudava Rao**[2], the judgment relied upon by Sri D.V. Sitarama Murthy, learned Counsel for the respondent, a learned

single judge of this Court held that an employee had a right to continue in service till he reached the age of superannuation on the basis of his correct date of birth and that he cannot be denied such right on the basis of a clerical error committed by the authorities concerned. The learned judge held that in cases where the date of birth was wrongly entered on account of a bonafide clerical error the question of limitation did not arise and the mere fact that the employee had approached the authorities just before his retirement was irrelevant as according to the correct date of birth he had a right to continue in service till he reached the actual age of superannuation.

In matters relating to appointment to service, various factors are taken into consideration before making a selection or an appointment. One of the relevant circumstance is the age of the person who is sought to be appointed. It may not be possible to conclusively prove that an advantage had been gained by representing a date of birth which is different than that which is later sought to be incorporated. But it will not be unreasonable to presume that when a candidate, at the first instance, communicates a particular date of birth it is obviously his intention that his age calculated on the basis of that date of birth should be taken into consideration by the appointing authority for adjudging his suitability for a responsible office. In fact, where maturity is a relevant factor to assess suitability, an older person is ordinarily considered to be more mature and, therefore, more suitable. In such a case, it cannot be said that advantage is not obtained by a person because of an earlier date of birth, if he subsequently claims to be younger in age, after taking that advantage. In such a situation, it would be against public policy to permit such a change

to enable longer benefit to the person concerned. Even in the absence of a statutory rule, the principle of estoppel would apply and the authorities concerned would be justified in declining to alter the date of birth. If such a decision is challenged, courts also ought not to grant any relief even if it is shown that the date of birth, as originally recorded, was incorrect because the candidate concerned had represented a different date of birth to be taken into consideration obviously with a view that it would be to his advantage. As he secured entry into the service, possibly in preference to other candidates, the principle of estoppel would clearly be applicable and the relief of change of date of birth can be legitimately denied. (**C. Rama Swamy**[1])

Normally, in public service, with entering into the service, even the date of exit, which is said as the date of superannuation or retirement, is also fixed. That is why the date of birth is recorded in the relevant register or service book, relating to the individual concerned. This is the practice prevalent in all services, because every service has fixed the age of retirement, and it is necessary to maintain the date of birth in the service records. Of late a trend can be noticed, wherein many public servants, on the eve of their retirement, wake up from their supine slumber and raise a dispute about their date of birth as entered in the service records, either invoking the jurisdiction of the High Court under Article 226 of the Constitution or filing applications before the Administrative Tribunals concerned, or even filing suits for adjudication as to whether the date of birth recorded is correct or not. (**State of U.P. v. Shiv Narain Upadhyaya**[4])

An application for correction of the date of birth should not be

dealt with by the Tribunal or the High Court keeping in view only the public servant concerned, for any such direction for correction of the date of birth of the public servant concerned has a chain reaction, inasmuch as others waiting for years below him for their respective promotions are affected in this process. Some are likely to suffer irreparable injury, inasmuch as, because of the correction of the date of birth, the officer concerned, continues in office, in some cases for years, within which time many officers who are below him in seniority waiting for their promotion, may lose their promotion forever. Cases are not unknown when a person accepts appointment keeping in view the date of retirement of his immediate senior. This is certainly an important and relevant aspect, which cannot be lost sight of by the court or the tribunal while examining the grievance of a public servant in respect of correction of his date of birth. If no rule or order has been framed or made, prescribing the period within which such an application has to be filed, then such application must be made within at least a reasonable time frame. In many cases it is a part of the strategy on the part of public servants to approach the court or the tribunal on the eve of their retirement, questioning the correctness of the entries in respect of their date of birth in the service-books. (**State of Punjab v. S.C. Chadha**[5]) (**State of U.P. v. Gulaichi**[6])

Applicants seeking correction of entries relating to date of birth have no vested right. Delay defeats discretion and loss of limitation destroys the remedy itself. Delay amounting to laches results in benefit of discretionary power being denied on principles of equity. Loss of limitation resulting in deprivation of the remedy is a principle based on public policy and utility and not equity

alone. There ought to be a limit of time by which human affairs stand settled and uncertainty is lost. (**Board of Secondary Education of Assam v. Mohd. Sarifuz Zaman**[7]) Even if there is no period of limitation prescribed for seeking correction of the date of birth, the employee concerned must do so without any unreasonable delay. In the absence of any provision in the rules for correction of date of birth, the general principle of refusing relief on grounds of laches or stale claims, is generally applied by Courts and Tribunals. Unless altered, the date of birth as recorded would determine the date of superannuation of an employee even if it amounts to abridging his right to continue in service on the basis of his actual age. {**Union of India Vs. Harman Singh**[8]; **Visakhapatnam Dock Labour Board v. E. Atchanna**[9]}

It is settled law that at the fag end of his career, an employee cannot be allowed to raise a dispute regarding his date of birth. (**Hindustan Lever Ltd. v. S.M. Jadhav**[10]). Courts or Tribunals, at a belated stage, should not entertain a claim for correction of the date of birth duly entered in the service records. (**Union of India v. Ram Suia Sharma**[11]). While disposing of' an application seeking alteration of the date of birth, the Court or the Tribunal, has first to examine, whether the application has been made within the prescribed period under some rule or administrative order. If there is no rule or order prescribing any period, then the Court or Tribunal has to examine, why such application was not made within a reasonable time after joining the service. (**Secy & Commissioner, Home dept Vs. R. Kirubakaran**[12])

In **Burn Standard Co. Ltd. v. Dinabandhu Majumdar**[13], the Supreme Court held thus:-

".....Entertainment by High Courts of writ applications made by employees of the Government or its instrumentalities at the fag end of their services and when they are due for retirement from their services, in our view, is unwarranted. It would be so for the reason that no employee can claim a right to correction of birth date and entertainment of such writ applications for correction of dates of birth of some employees of Government or its instrumentalities will mar the chances of promotion of their juniors and prove to be an undue encouragement to the other employees to make similar applications at the fag end of their service careers with the sole object of preventing their retirements when due. Extraordinary nature of the jurisdiction vested in the High Courts under Article 226 of the Constitution, in our considered view, is not meant to make employees of Government or its instrumentalities to continue in service beyond the period of their entitlement according to dates of birth accepted by their employers, placing reliance on the so-called newly-found material. The fact that an employee of Government or its instrumentality who has been in service for over decades, with no objection whatsoever raised as to his date of birth accepted by the employer as correct, when all of a sudden comes forward towards the fag end of his service career with a writ application before the High Court seeking correction of his date of birth in his Service Record, the very conduct of non-raising of an objection in the matter by the employee, in our view, should be a sufficient reason for the High Court, not to entertain such applications on grounds of acquiescence, undue delay and laches. Moreover, discretionary jurisdiction of the High Court can never be said to have been reasonably and judicially exercised if it entertains such writ application, for no employee, who had grievance as to his date of birth in his "Service and Leave Record" could have genuinely waited till the fag end of his service career to get it corrected by availing of the extraordinary jurisdiction of a High Court. Therefore, we have no hesitation, in holding, that ordinarily High Courts should not, in exercise of their discretionary writ jurisdiction, entertain a writ application/petition filed by an employee of the Government or its instrumentality, towards the fag end of his service, seeking correction of his date of birth entered in his "Service and Leave Record" or Service Register with the avowed object of continuing in service beyond the normal period of his retirement....." (emphasis supplied)

In **State of T.N. v. T.V. Venugopalan**[14], the Supreme Court held thus:-

".....The inordinate delay in making the application is itself a

ground for rejecting the correction of date of birth. The government servant having declared his date of birth as entered in the service register to be correct, would not be permitted at the fag end of his service career to raise a dispute as regards the correctness of the entries in the service register. It is common phenomenon that just before superannuation, an application would be made to the Tribunal or court just to gain time to continue in service and the Tribunal or courts are unfortunately unduly liberal in entertaining and allowing the government employees or public employees to remain in office, which is adding an impetus to resort to the fabrication of the record and place reliance thereon and seek the authority to correct it. When rejected, on grounds of technicalities, question them and remain in office till the period claimed for gets expired……..” (emphasis supplied)

The petitioner is a post-graduate in Telugu. He was appointed as a lecturer in 1960 and his date of birth was recorded in the service register as 01.07.1938. The date of birth as entered in the service record, which in turn is based on his school records, is the basis on which the petitioner’s entitlement to continue in service was reckoned and accordingly the petitioner was required to retire on reaching the age of superannuation of 58 years on 30.06.1996.

The authenticity or otherwise of the N.C.C. records apart, the fact remains that the petitioner submitted a representation for alteration of his date of birth only on 03.03.1996 just three months prior to 30.06.1996 the date on which he was due to retire on reaching the age of superannuation of 58 years. Having served the 2nd respondent college for 36 long years and having kept quiet throughout his long tenure, such a belated request for alteration of his date of birth in the service records was rightly not entertained by the Appellants herein.

In view of the catena of judgments of the Apex Court referred to above, the view taken by the learned single Judge of this Court, in **Vasudevarao**[2], that in the absence of a statutory rule there can be no limitation for correction of the date of birth, is no longer good

law. In **Raghbir singh**[3], the Apex Court held that findings of fact recorded by the Labour Court as confirmed by the High Court could not be assailed before it. The question as to whether a belated application, for correction of date of birth, made just a few months prior to the employee's retirement should be entertained or not did not arise for consideration therein. The judgment in **Raghbir singh**[3], is therefore of no assistance to the respondent-petitioner.

The order of the learned single judge directing alteration of the petitioner's date of birth in the service records and his consequential reinstatement into service is accordingly set aside. The petitioner shall only be entitled for terminal benefits treating his date of birth as 01.07.1938 and as his having retired from service on 30.06.1996 on reaching the age of superannuation of 58 years. If, however, the respondent-writ petitioner was permitted to continue in service thereafter, any salary which may have been paid to him shall not be recovered, since any such payment was for service rendered by him to the respondent college.

Subject to the aforesaid observations, the order in W.P. No. 15318 1996 dated 09.09.1997 is set aside. The writ appeal is allowed. However, in the circumstances, without costs.

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B. PRAKASH RAO,

J

Date: .07.2006

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RAMESH RANGANATHAN, J

Note: L.R. copy to be marked.
B/o
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[1] (1997) 4 SCC 647

[2] W.P.No. 4553 of 1994 dated 25.11.1994

[3] AIR 2002 SC 509

[4] (2005) 6 SCC 49

[5] (2004) 3 SCC 394

[6] (2003) 6 SCC 483

[7] (2003) 12 SCC 408

[8] 1993(2) SCC 162

[9] (1996) 2 SCC 484

[10] (2001) 4 SCC 52

[11] (1996) 7 SCC 421

[12] AIR 1993 SC 2647

[13] (1995) 4 SCC 172

[14] (1994) 6 SCC 302